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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

VANESSA GRAY, Plaintiff and Appellant, v. MIF OF SAN FRANCISCO, INC., et al., Defendants and Respondents.	B206619 (Los Angeles County Super. Ct. No. BC307841)

APPEAL from a judgment of the Superior Court of Los Angeles County. William F. Fahey, Judge. Affirmed.

Hilda Garzon-Ayvazian for Plaintiff and Appellant.

Lewis Brisbois Bisgaard & Smith, Roy G. Weatherup, Allison Ann Arabian; Pollard Mavredakis Cranert Crawford & Stevens and James F.B. Sawyer for Defendants and Respondents MIF of San Francisco and Oscar Perez.

Pollak, Vida & Fisher, Michael M. Pollak, Hamed Amiri Ghaemmaghami; Law Offices of Marsha Munemara and Dennis O'Meara for Defendant and Respondent Claudia Mejia.

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INTRODUCTION

After she was injured in an automobile accident, appellant Vanessa Gray sued respondents Claudia Mejia, Oscar Perez, and Perez's employer, MIF of San Francisco, Inc., dba Village Imports, alleging negligence.[1] Gray contends that the trial court erroneously admitted evidence of payments for her injuries from a collateral source. We conclude that Gray has failed to establish that the admission of such evidence requires reversal. Applying an incorrect standard of review, Gray also contends that the judgment should be reversed because the evidence sufficed to establish negligence on the part of Perez and Mejia. We find that substantial evidence supports the verdicts. Accordingly, we affirm the judgment.

BACKGROUND

On a cloudy, drizzly day in November 2002, the truck driven by Perez nearly missed colliding with appellant Gray's car as Gray was making a left turn at an intersection where the traffic signals had malfunctioned and flashing red lights had replaced them. In swerving to avoid Gray's car, Perez hit Mejia's car.[2] Gray, Perez, and Mejia all pulled over and parked at the curb. Gray stepped off the sidewalk to look at the damage to Mejia's car, and as she stood in the street, a fourth car (a Jeep) struck her, causing serious injuries.

Gray sued Leif Erickson Asprer, who was the driver of the Jeep, and also the City of Los Angeles, Perez, Village Imports, and Mejia. Asprer and the City are no longer parties to the action. Village Imports and Perez brought a motion for summary judgment which the trial court granted upon finding that the moving defendants owed no duty of care to Gray, as a matter of law. On February 28, 2005, the court entered a judgment of dismissal of the action as to Village Imports and Perez.

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1 Perez was a delivery truck driver making deliveries at the time of the collision.

2 Neither Perez nor Mejia struck Gray's car.

The following month Gray and Mejia stipulated to a judgment after nonsuit in order to facilitate an appeal. This court reversed both judgments, holding that the defendants' duty to Gray arose from the original negligence, if any, in causing the first collision.[3] We further held that if such negligence were shown, factual issues would remain as to whether Asprer's actions qualified as an independent intervening act and whether Gray was the cause of her own injuries.

The case was tried to a jury in November 2007. The only witnesses to the collisions who testified were Gray, Perez, and Mejia. Gray's physician and Gray's mother testified regarding Gray's injuries and treatment, and a forensic economist testified regarding her damages.

Gray testified that she was travelling west on Melrose Avenue. She stopped at the intersection of Melrose and Virgil Avenue and waited for oncoming and cross-traffic to clear before proceeding to the middle of the intersection in order to turn left. Gray claimed that Perez came from her right and failed to stop at the flashing red light. Perez swerved to miss her and hit Mejia's car instead. Gray completed her turn, pulled over, and parked in order to fulfill her obligation as a witness to this accident. Perez and Mejia parked behind her, and she walked back to talk to them. Gray claimed that she was standing off the curb in the gutter between Perez's truck and Mejia's car when Asprer's Jeep struck her. She did not see the Jeep coming and could not tell where it came from.

Gray testified that she did not think Mejia did anything wrong. In addition to the driver of the Jeep, she blamed Perez because she thought he started the chain of events.

Perez testified that he was travelling south on Virgil, approached the intersection with Melrose, and did not run the flashing red lights. Instead, he stopped for at least three seconds before entering the intersection. He waited for a car to complete a left turn from Melrose onto Virgil and then entered the intersection once it was clear. He then saw Gray in the intersection beginning a left turn, and he braked. As he braked, his truck slid to the right and hit Mejia's car, damaging her tire and fender. Perez testified that he

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[3] See *Gray v. Asprer* (May 19, 2006, B183415 [nonpub. opn.]).

proceeded through the intersection and parked at the curb in front of a closed carwash about 10 feet from the corner. Mejia parked about three or four feet behind his truck.

Perez testified that he and Mejia spoke for a moment while standing on the sidewalk. It was Perez's recollection at trial that he and Mejia remained on the sidewalk when Gray approached them. At deposition, however, he testified that all three of them stepped into the space between the his truck and Mejia's car. In any event, at some point Gray stood between the two vehicles, and then stepped into the street to see the damage to Mejia's car. At that moment, Perez heard the Jeep tires squeal and saw it strike Gray on her left side, throwing her against the back of his truck. He did not know where the Jeep came from.

Perez testified that his collision with Mejia was his fault because he veered to miss Gray's vehicle. However, he thought that Gray caused the accident by crossing in front of him and cutting him off.

Mejia testified that both she and Perez stopped for the flashing red lights before proceeding into the intersection. She was in the No. 2 lane and Perez's truck was in the No. 1 lane, and the truck blocked her view of the cross-traffic on her left. Nevertheless, she proceeded into the intersection because Perez did.

After colliding with Perez's truck, Mejia parked in front of the car wash in a red zone about five to 10 feet behind Perez's truck. She testified that she did not know how far she parked from the intersection, but could not park farther away because her tire had been destroyed in the collision and her car was barely drivable.

While Mejia sat in her car, she saw Gray park in front of the truck. Gray emerged from her car and approached Mejia's car from the street side, not on the sidewalk. At no time did she see Gray leave the street or stand in the space between her car and the truck. Perez was on the sidewalk the entire time and Mejia did not see him or Gray speaking. Mejia got out of her car and stood in the space between her car and the truck, about five feet away from Gray. Moments later, the Jeep struck Gray. Mejia did not see the Jeep before it hit Gray.

By special verdict, the jury found that Perez and Mejia were not negligent. On November 20, 2007, the court entered judgment in favor of Perez, Village Imports, and Mejia. On January 15, 2008, Perez and Village Imports served a notice of entry of judgment and Gray filed a timely notice of appeal on March 11, 2008.

DISCUSSION

1. *Collateral Source*

Gray contends that the trial court erroneously admitted evidence of worker's compensation payments in violation of the "collateral source rule."

The collateral source rule provides that "[w]here a person suffers personal injury or property damage by reason of the wrongful act of another, an action against the wrongdoer for the damages suffered is not precluded nor is the amount of the damages reduced by the receipt by him of payment for his loss from a source wholly independent of the wrongdoer. [Citations.]" (*Anheuser-Busch, Inc. v. Starley* (1946) 28 Cal.2d 347, 349.) With respect to whether evidence of a collateral source of payment is admissible at trial, "California has adopted the closely related principle that, as a general rule, jurors should not be told that the plaintiff can recover compensation from a collateral source." (*Lund v. San Joaquin Valley Railroad* (2003) 31 Cal.4th 1, 10.) Collateral source evidence "should be permitted only upon a persuasive showing that the evidence sought to be introduced is of substantial probative value." (*Hrnjak v. Graymar, Inc.* (1971) 4 Cal.3d 725, 733.)

Despite the foregoing, the erroneous admission of evidence will not justify a reversal unless "[t]here appears of record an objection to or a motion to exclude or to strike the evidence that was timely made and so stated as to make clear the specific ground of the objection or motion . . . ." (Evid. Code, § 353, subd. (a).)

Although Gray contends that she objected to evidence of her workers' compensation recovery, she acknowledges that she answered questions about such payments during cross-examination without objection from her attorney. Relying on *People v. McDaniel* (1943) 59 Cal.App.2d 672, 677, she argues that she did not forfeit

her later objections on the subject. This argument begs the question whether she properly objected to later questions. Gray claims that she objected to questions posed to her physician, Dr. Schiffman. However only one of the objections Gray cites related to a question about insurance. Defense counsel asked Dr. Schiffman whether he had prepared reports to workers' compensation attorneys. Appellant's counsel stated, "Objection, Your Honor, with respect to workers' compensation." Counsel specified no ground for the objection and arguably did not preserve it for appeal. (See Evid. Code, § 353, subd. (a).)[4] However, as explained later, even if counsel preserved the issue, reversal is not warranted.

Next, Gray contends that she objected to questions put to her economics expert, Brian Conley, regarding worker's compensation benefits and that she requested a sidebar discussion on the issue. The record reflects that her attorney objected to the following question: "[W]ere you given any information about a workers' compensation claim?" Counsel's objection was stated as follows: "352. It's prejudicial, as well." The court overruled the objection and the witness answered, "No." Upon further questioning without objection, the witness testified that he did not take any workers' compensation benefits into account in determining Gray's damages and did not know whether she had received any such benefits. Later, when defense counsel asked Conley whether he had offset any workers' compensation benefits, appellant's counsel objected on the ground of "asked and answered." He then interposed a continuing objection on that ground and asked for a sidebar discussion, which was denied. Regarding the remaining questions to which Gray claims her attorney objected, she has failed to cite to the page in the record where such objections can be found, and we have found none.

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[4] The court told Mr. Daniel, appellant's counsel, to discuss the objection at the next break. He did not do so. Just before instructing the jury, the court pointed out to counsel that he had made no objection on the record. Mr. Daniel admitted that all discussions regarding collateral source evidence had been made in chambers. The court pointed out to counsel that it had suggested he submit a limiting instruction, but he never did.

From this review, we conclude that the only objection arguably related to the collateral source rule was to the following question posed to Conley: "[W]ere you given any information about a workers' compensation claim?" The stated grounds were Evidence Code section 352 and "prejudicial." Assuming for discussion that the grounds stated were specific enough to make clear to the court that Gray's objection was based on the collateral source rule, she has not shown that the admission of Conley's response resulted in a miscarriage of justice. (See Evid. Code, § 353, subd. (b).)[5]

Assuming arguendo that appellant did tender a proper analysis about prejudice, respondents contend that no prejudice is shown because the jury never reached the issue of damages. The probable prejudice caused by the admission of collateral source evidence is obvious when "the issue of damages was sharply contested and the damage award was small." (*Hrnjak v. Graymar, Inc*., *supra*, 4 Cal.3d at p. 734.) However, evidence of a collateral source of payment for injuries can also affect the verdict as to liability. (*Hoffman v. Brandt* (1966) 65 Cal.2d 549, 554.) The prejudicial effect of such evidence can be dispelled by an appropriate curative instruction. (*Gersick v. Shilling* (1950) 97 Cal.App.2d 641, 650.) The trial court gave defense counsel more than one opportunity to submit such an instruction, but he did not do so.

2. *Substantial Evidence -- First Accident*

Gray contends that "the verdict was not substantiated by the facts." She argues that the judgment must be reversed because the evidence showed that Perez and Mejia negligently caused both accidents and that Gray was not negligent. We construe her argument as a contention that the verdict is not supported by substantial evidence.

Gray has summarized all the evidence supporting her contention that the jury wrongly found that respondents were not negligent, including her own testimony.

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5 The erroneous admission of evidence will not justify a reversal unless the reviewing court is of the opinion that the error resulted in a miscarriage of justice. (Evid. Code, § 353, subd. (b).) A miscarriage of justice occurs when it appears that a result more favorable to the appealing party would have been reached in the absence of the alleged errors. (*People v. Watson* (1956) 46 Cal.2d 818, 836.)

However, the purpose of appellate review under the substantial evidence test is not to determine whether the losing party's contentions are supported by a preponderance of evidence. (See generally, 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 370, p. 427-428.) Instead, "when a verdict is attacked as being unsupported, the power of the appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the conclusion reached by the jury." (*Estate of Teel* (1944) 25 Cal.2d 520, 526, italics omitted.)

"'It is well established that a reviewing court starts with the presumption that the record contains evidence to sustain every finding of fact.' [Citations.] [Appellants must] demonstrate that there is no substantial evidence to support the challenged findings.' [Citations.] A recitation of only [the appellants'] evidence is not the 'demonstration' contemplated under the above rule. [Citation.] Accordingly, . . . "'they are required to set forth in their brief all the material evidence on the point and not merely their own evidence. Unless this is done the error is deemed to be waived.' [Citations.]" (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881.)

Gray contends the evidence established that she stopped at the intersection and waited for the traffic to clear before proceeding, and that Perez failed to stop for the flashing red lights. Gray further contends that Mejia's testimony that she entered the intersection when Perez's truck moved forward established Mejia's negligence. However, Perez testified that he stopped for at least three seconds before entering the intersection, waited for one car to complete a left turn, and then entered the intersection when it was clear. A reasonable inference from this testimony is that Perez entered the intersection before Gray did. If this is true, Perez was not negligent. "[W]hen 'two or more inferences can be reasonably deduced from the facts, the reviewing court is without power to substitute its deductions for those of the trial court.'" (*Nichols v. Mitchell* (1948) 32 Cal.2d 598, 600-601.)

The reviewing court must resolve all conflicts in favor of respondents. (*Campbell v. Southern Pacific Co.* (1978) 22 Cal.3d 51, 60 (*Campbell*).) The jury was not required to believe Gray's testimony. (*Stevens v. Parke, Davis & Co.* (1973) 9 Cal.3d 51, 67.)

Moreover, we have no power to disbelieve Perez's testimony or reject it in favor of Gray's. (*Campbell*, at p. 60.)

We agree with Gray's contention that Mejia's admission that she could not see the entire intersection, but merely proceeded when Perez's truck did, demonstrated an absence of due care. However, an essential element of negligence is causation, which is established by showing that the defendant's act was a substantial factor in bringing about the injury. (*Padilla v. Rodas* (2008) 160 Cal.App.4th 742, 752.) Mejia's actions could not have been a cause of the accident if Perez was not negligent in proceeding. Gray's argument that Mejia was a factor in causing the first accident would require us to disbelieve Perez's testimony that he stopped and entered the intersection first after allowing cross-traffic to clear. It would require us to believe Gray's testimony that she entered the intersection first and Perez failed to stop. We cannot do so; we must resolve all conflicts in respondents' favor and abide by the jury's resolution of any credibility issues. (*Campbell, supra*, 22 Cal.3d at p. 60.)

Gray points to Perez's admission that he veered to the right to avoid her before he reached the center of the intersection. She contends that this admission established that it was physically impossible for Perez and Mejia to have entered the intersection first. Gray is apparently relying on the doctrine of inherent improbability, an exception to the rule against resolving credibility conflicts. (See *Herbert v. Lankershim* (1937) 9 Cal.2d 409, 471-473.) However, Gray has merely *inferred* from Perez's admissions that she entered the intersection first. Later cases confined the inherent improbability doctrine to testimony about facts that are physically impossible or patently false without resorting to inferences or deductions. (*People v. Cudjo* (1993) 6 Cal.4th 585, 608.)

Perez testified that the intersection was clear when he entered it and he was already in the intersection when he saw Gray begin her left turn. As he braked, Perez's truck slid into Mejia's car. Gray has not shown that this was physically impossible.[6]

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[6] We note that Gray might have presented the testimony of an engineer to establish physical impossibility, but she did not do so.

Thus, we may not disbelieve that testimony or believe Gray's testimony in order to draw the inference that she entered the intersection first. (*People v. Cudjo*, *supra*, 6 Cal.4th at p. 608.) It was the province of the jury to resolve that conflict in the testimony, to resolve any internal conflict in Perez's testimony, and to draw its own inferences. (See *Stevens v. Parke, Davis & Co*., *supra*, 9 Cal.3d at p. 67.)

In *Westcott v. Hamilton* (1962) 202 Cal.App.2d 261, 266, 273, a similar case, there were inconsistencies in the testimony regarding the rates of speed, distances, and positions of the respective vehicles at the time of the collision. The appellate court upheld the jury's resolution of the conflicts and affirmed the judgment. (*Id*. at pp. 273-274.) In another similar case, the plaintiff and defendant both testified that the other party had run the red light. (*Locastro v. Costello* (1961) 195 Cal.App.2d 636, 639.) The appellate court concluded that the jury must have believed the defendant and upheld a defense verdict. (*Ibid*.)

Here, too, the jury must have believed Perez's testimony that he stopped at the intersection and proceeded forward before Gray entered the intersection and began her turn in front of him. The testimony of a single witness, if believed by the jury, is sufficient to support a verdict. (Evid. Code, § 411.) This is so even if the testimony of that witness has been contradicted by every other witness in the case. (*Francis v. City & County of San Francisco* (1955) 44 Cal.2d 335, 340.) Because Perez waited for cross-traffic to clear and then entered the intersection from Gray's right before she entered the intersection, Gray was required to yield the right of way. (See Veh. Code, § 21800.) We conclude that Perez's testimony supports the jury's finding that respondents were not negligent.

3. *Second Accident*

Gray contends that respondents' negligence caused the first accident and the actions of the Jeep driver did not break the chain of causation. "An intervening cause which breaks the chain of causation from the original negligent act is itself regarded as the proximate cause of the injury and relieves the original negligent actor of liability.

[Citation.] [¶] The general test of whether an independent intervening act, which operates to produce an injury, breaks the chain of causation is the foreseeability of that act. [Citation.]" (*Schrimscher v. Bryson* (1976) 58 Cal.App.3d 660, 664.) "The defendant has the burden to prove the affirmative defense of superseding cause, that is, that the intervening event is so highly unusual or extraordinary that it was unforeseeable. [Citation.]" (*Arreola v. County of Monterey* (2002) 99 Cal.App.4th 722, 760.)[7] Because the jury found that the first accident was not caused by respondents' negligence, respondents were not required to present evidence of this affirmative defense. Because Gray has not established error, we need not reach the issue.

DISPOSITION

The judgment is affirmed. Respondents shall have costs on appeal.

MOHR, J.[*]

We concur:

RUBIN, ACTING P. J. BIGELOW, J.

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[7] In our opinion reversing summary judgment and nonsuit in this case, we commented that "on the one hand, it could be said that it is not unusual, and certainly not extraordinary, for a car making a turn on a wet roadway to skid out of control. On the other hand, the precise facts of the skid may turn out to be unusual enough, perhaps in terms of the length of the skid, to constitute an independent intervening act. These questions should be resolved by the trier of fact." (See *Gray v. Asprer, supra,* B183415.) None of the parties submitted evidence of such facts at trial.

[*] Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.